



July 18, 2008

Ms. Jennifer J. Johnson  
Secretary, Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Re: Docket No. R-1286

Dear Ms. Johnson:

This comment letter is submitted by the American Financial Services Association (“AFSA”)<sup>1</sup> in response to the Proposed Rule issued by the Board of Governors of the Federal Reserve System (“Board”) amending Regulation Z (“Proposed Rule”). AFSA appreciates the opportunity to provide its comments on the Proposed Rule to the Agencies.<sup>2</sup>

### **In General**

AFSA commends the Board for issuing its proposal for additional modifications to Regulation Z prior to finalizing the Board’s revisions to Regulation Z. On the whole, AFSA supports many of the proposed modifications. We do have comments on some of the more substantive provisions and we offer suggestions we hope the Board will find constructive. Our specific comments on the Proposed Rule follow.

### **E-SIGN Clarification**

The Proposed Rule would clarify that certain disclosures that are not required to be in writing may be provided electronically without regard to the notice and consent provisions of the E-SIGN Act when the consumer requests the product electronically. The E-SIGN notice and consent provisions generally apply in connection with the electronic provision of disclosures that must otherwise be in writing. Because the disclosures referenced in the Proposed Rule do not need to be provided in writing, we believe the Board’s clarification is consistent with the E-SIGN Act, and we urge the Board to retain it.

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<sup>1</sup> Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members are important sources of credit to the American consumer, providing approximately 20 percent of all consumer credit. AFSA member companies offer or are assigned many types of credit products, including credit cards, retail credit, automobile retail installment contracts, personal installment loans and mortgage loans.

<sup>2</sup> AFSA will also be commenting on the Board’s proposed rule to amend Regulation AA. We do not offer comments on the Proposed Rule as it may relate to the proposed amendments to Regulation AA. The provisions in the Proposed Rule relating to the Regulation AA rulemaking generally implement the disclosures relating to the substantive provisions proposed in the Regulation AA rulemaking. AFSA will submit comments on the Regulation AA rulemaking under separate cover.

### **Use of the Term “Grace Period”**

It is not clear to AFSA that the existing reference to “grace period” in Regulation Z disclosures is confusing to consumers. In fact, given the number of consumers who do not carry a balance and thereby enjoy interest free loans, it would appear that consumers are well aware of how a grace period generally operates and that consumers benefit as a result. In short, this disclosure does not strike us as one in need of revision. Regardless of whether the Board determines that the term “grace period” is no longer useful for consumers, the proposed disclosures do not appear to be any more helpful or accurate.

Additionally, the proposed amendments to 226.5a substitute the term "interest" for "finance charge" in connection with proposed changes in the grace period disclosures based solely on the perceptions of a limited number of consumers in focus groups. This sets a dangerous precedent if mandated disclosures are to be perennially adjusted based on the vagaries of focus groups. The term "finance charge" was adopted in TILA because there are different types of charges that contribute to the overall cost of credit – not all of which are “interest.” One such charge is the time-price differential under retail credit laws. It has not been considered to be “interest” for over one hundred years in most states. Requiring such charges to be described as "interest" instead of the more accurate "finance charge" may subject retail creditors to needless challenges under state common law and statutory retail credit laws for charging usurious "interest." Requiring such a description is also inconsistent with the long-standing terminology used in Regulation Z. If the Board is going to adopt and mandate use of the term "interest" to describe charges that are not "interest," it should at least clarify its intention that any such use of the term does not in any way affect whether such charges are "interest" or some other form of credit charge under applicable state law.

In short, AFSA believes that the elimination of 'grace period' will not be beneficial for consumers and that the proposed replacement would add confusion to the disclosures rather than eliminate it.

### **Promotional Rate Disclosures**

AFSA generally supports the Board’s proposal to require disclosures for promotional rates similar to the proposed introductory rate disclosures included in a prior Regulation Z proposal. Both types of disclosures apply to written or electronic promotional materials. The Board specifically solicits comment, however, on whether all or any of the disclosures should be required in other advertisements, such as telephone, radio, or television advertisements. AFSA urges the Board to limit the introductory/promotional disclosures to written and electronic advertisements, and not to other types of advertisements. Not only do we believe that these disclosures are unnecessary in these contexts, but we know that they would be difficult to implement in a meaningful way in advertisements that are not written or electronic. If the Board does intend to extend the disclosure requirement to other forms of advertising, we ask the Board to issue the proposal for public comment, as the current proposals pertain to requirements that are specific to written or electronic advertisements (*e.g.*, listing a disclosure in a prominent location closely proximate to the first listing of an APR). We do not believe we have sufficient

information to comment on how the Board may intend to translate these disclosures to other media.

We also would like to request a few clarifications regarding the promotional rate/introductory rate disclosures. First, we believe an issuer should be able to reference a promotional rate, even if the rate may be an introductory rate for some consumers. For example, a card issuer may offer a promotion that is available to current customers as well as new applicants. It would not be appropriate to require different disclosure documents for the two audiences, and we believe a reference to a promotional rate to new applicants will be relevant. In this regard, providing two different disclosure documents at the point of sale is not operationally feasible.<sup>3</sup> We also ask the Board to clarify that a deferred interest rate is not a promotional interest rate for purposes of the promotional interest rate disclosures under Regulation Z. The Proposed Rule also refers to “consumer credit card accounts” although the Board does not define such term in Regulation Z. We ask the Board to provide the same definition for this term as it proposes in the Regulation AA rulemaking.<sup>4</sup> Finally, we ask the Board to clarify that an issuer who makes the introductory or promotional rate disclosures may still apply default pricing (in compliance with other applicable requirements) to the account, including the revocation of any promotional or introductory rate.

### **Minimum Finance Charge**

The Proposed Rule would eliminate the minimum finance charge disclosure from the Schumer box so long as the minimum finance charge on the account is \$1.00 or less. Furthermore, an issuer would not be required to disclose the minimum finance charge of \$1.00 or less in writing as part of the account-opening table, but the Board expects issuers will continue to do so because the charge must be disclosed before the consumer becomes obligated for it. The \$1.00 threshold would be adjusted to the next whole dollar based on a specific inflation measurement.

AFSA applauds the Board for proposing to eliminate this disclosure requirement for those card issuers that charge \$1.00 or less as a minimum finance charge. It is our understanding that this disclosure is among those that is not particularly useful to consumers as part of the Schumer box. Deleting it will allow issuers and consumers to focus on other key account terms in the Schumer box. For that reason, we also encourage the Board to consider a higher threshold for the purposes of the exemption (i.e. \$3.00).

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<sup>3</sup> In fact, in our comment letter on the previous Reg. Z rulemaking, AFSA discussed the many difficulties in providing different disclosure documents at the point of sale for retail credit. We must note here that the requirement to print the account APR in the account-opening table itself, instead of providing it clearly and conspicuously elsewhere in the account-opening disclosures would impose significant and unnecessary costs on retailers and card issuers.

<sup>4</sup> This comment also applies to the use of the term in connection with the deferred interest disclosures.

### **Foreign Transaction Fees**

In an earlier Regulation Z proposal, the Board proposed to *prohibit* the disclosure of foreign transaction fees in the Schumer box. The current Proposed Rule, however, would *require* such fees to be disclosed in the Schumer box. AFSA believes the Board was correct to exclude these fees from the Schumer box. AFSA members report that consumers generally do not shop for a credit card based on foreign transaction fees. Therefore, these fees do not appear to be the type that should be in the Schumer box. Furthermore, we believe the usefulness of the Schumer box may be reduced if it includes too much information, or information that consumers do not find useful when shopping for a credit card. For these reasons, we urge the Board to exclude foreign transaction fees from the Schumer box.

### **Disclosures of Increased APRs**

The Proposed Rule outlines the requirements for providing the 45-day notice for an increased APR and how this notice relates to circumstances when the cardholder becomes 30 days delinquent (assuming the Regulation AA rulemaking retains the 30-day delinquency requirement). AFSA believes that the Proposed Rule's requirement to renotify the consumer after the consumer defaults if he becomes 30 days delinquent at a later time after the 45-day period expires is unnecessary. We believe that once the consumer receives a 45-day notification of an increase in the APR, a card issuer should be permitted to increase the APR on an existing balance any time after that 45-day period expires so long as the 45-day notice included a reference to such possibility. We do not believe there is additional consumer utility to the second notice, but it does create additional compliance burdens for issuers—not to mention the risk management concerns associated with having to “stand pat” for another 45 days (or longer) while the cardholder's credit profile deteriorates. We thus urge the Board to reconsider the necessity of a second notice if the customer is still in a default rate pricing status.

### **Cut-Off Times**

Section 226.10(b)(1) of the Proposed Rule would state that a creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments. Section 226.10(b)(2)(ii) would permit a creditor to set reasonable cut-off times for payments received by mail, by electronic means, by telephone, and in person. However, 226.10(b)(2)(ii) would also provide “that it would not be *reasonable* for a creditor to set a cut-off time for payments by mail that is earlier than 5 p.m. on the payment due date at the location specified by the creditor for receipt of such payments.” (Emphasis added.)

AFSA strongly disagrees with the assertion that a cut-off time that is prior to 5 p.m. is inherently *unreasonable*. Creditors have developed cut-off times based on a variety of factors, including systems requirements, litigation, regulatory guidance, and the operations of the U.S. Postal Service. Just as the Board believes it is reasonable for a bank to establish certain cut-off times that may be earlier than 5 p.m. for purposes of Regulation CC, the Board should affirmatively acknowledge that a creditor can establish a reasonable cut-off time under Regulation Z prior to 5 p.m. At the very least, the Board should not label these cut-off times “unreasonable.”

In addition to our concerns about the Board’s labeling of current reasonable industry practices as “unreasonable,” we are also concerned about the operational impact associated with the Proposed Rule. It may be very difficult, if not impossible, for a creditor to establish systems that credit a payment on the day it was received so long as it was received prior to 5 p.m. Furthermore, it is not clear why this is necessary in light of the fact that the *vast majority* of mail is delivered in the morning and many creditors offer a silent grace period for payments that are only a few hours or days late. The Proposed Rule would impose significant costs on creditors without providing much, if any, measurable consumer benefit. For these reasons, we recommend the Board delete this portion of the Proposed Rule.

### **Card Substitution**

The Proposed Rule would amend the Official Staff Commentary to provide that an issuer that proposes to change the merchant base which will honor an accepted credit card may not properly substitute the new card for the accepted card without a specific request or application if the account has been inactive for a 24-month period preceding the issuance of the substitute card. The Proposed Rule would not affect changing the merchant base so that the cardholder can use the card at an affiliate of the merchant.

AFSA does not believe this change should be adopted. The Board describes two issues prompting the change, neither of which rise to the level of requiring regulatory intervention. First, the Board claims consumers are concerned about “potential identity theft”<sup>5</sup> when they receive a general purpose card in the mail as a substitute for a private label card. These concerns are unfounded in light of the liability limitations in Regulation Z. In fact, it may be that the card the consumer is receiving has *greater* liability protection than the private label card it is replacing since most general purpose cards have some form of \$0 liability protection that private label cards may not. Second, the Board states that consumers are “frustrated” about a card issuer’s unilateral decision to change fundamentally the potential uses of the card. This would appear to be a customer service issue, not one rising to the level of regulatory change, especially since there does not appear to be a genuine consumer protection issue involved and the card often has *greater* functionality after the substitution.

If the Board adopts this provision, AFSA requests that a card should be inactive for longer than 24 months before it is ineligible for substitution. We also ask the Board to clarify how this new interpretation would be applied if affiliates were removed from a merchant base, or if franchisees are added/removed from a merchant base.

### **Deferred Interest and Interest Accrual Disclosures**

The Proposed Rule includes new requirements relating to deferred interest promotions. Under the Proposed Rule, “deferred interest” means finance charges on balances or transactions that a consumer is not obligated to pay if those balances or transactions are paid in full by a specified date. The requirements would not apply to grace periods or 0% APR offers where the consumer is not obligated for interest attributable to the time period the 0% APR is in effect.

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<sup>5</sup> We quote the language from the Proposed Rule despite the fact that fraud is different than “identity theft.”

The general requirement in the Proposed Rule is that an issuer must disclose the deferred interest period or the date by which the consumer must pay the balance in full to avoid finance charges on such balance clearly and conspicuously in immediate proximity to each statement of “no interest,” “no payments,” “deferred interest,” or similar term. According to the Proposed Rule, the disclosure must be equally prominent to the claim of “no interest” to be considered “clear and conspicuous.” The deferred interest advertising requirements would apply to all written and electronic advertisements, including accompanying materials.

In addition to the deferred interest disclosures, the Proposed Rule would also require certain interest accrual disclosures. Specifically, an issuer must provide a statement in a prominent location closely proximate to the first statement of “no interest” or similar term that: (i) if the balance is not paid within the deferred interest period, interest will be charged from the date the consumer became obligated for the balance; (ii) interest will be charged from the date the consumer becomes obligated for the balance if the account is otherwise in default; and (iii) if the minimum monthly payments do not fully amortize the balance during the deferred interest period, making only the minimum monthly payments will not pay off the balance in time to avoid interest charges. The interest accrual disclosures do not apply to an envelope or to a banner or pop up advertisement linked to an application or solicitation provided electronically.

AFSA believes that the proposed deferred interest and interest accrual disclosures are not necessary and that requiring the disclosure to be in the immediate proximity and of equal prominence is unreasonable and unworkable. Furthermore, we believe the proposed disclosures are inappropriate in the context of many forms of advertisements of deferred interest. AFSA members are well versed in providing deferred interest promotions. Typically, explanatory disclosures are clearly referenced by asterisk with each mention of “no interest,” “no payments,” or “deferred interest.” Providing a ready reference could be required and would not be unduly burdensome. Also typically, the disclosures currently being made are in reasonable proximity to the claims of “no interest,” “no payments,” or “deferred interest.” That should be sufficient. Generally speaking, consumers appear to be aware of the terms of these offers and understand how they operate and are satisfied with the programs. The Board has not offered evidence that consumers are misled by deferred interest advertisements or that they do not understand them. Therefore, AFSA requests the Board to omit this requirement from the final rule.

If the Board retains some form of a disclosure requirement in connection with deferred interest offers, we ask that the disclosures be appropriate to the advertisement. The proposed disclosures, although bulky, could conceivably be given in connection with a mailed solicitation or one on a web site with sufficient flexibility with regard to reasonable prominence and a reasonably proximate location. However, without such flexibility, these disclosures would overwhelm many written advertisements, both in various media and in-store. As proposed, a simple sign above an appliance that says “No Interest for 6 Months!” would need the deferred interest disclosure (in equal prominence to text of the advertisement itself) and the interest accrual disclosure (with up to three separate points to be made). AFSA does not believe that a five word advertisement should be crowded out by several sentences of disclosures when an appropriate reasonable alternative exists. AFSA believes it would be more appropriate, in the

context of an in-store advertisement, to require a simple asterisk referring the consumer to terms and conditions included with an application or available at a sales counter or from a sales person.

Also, as it did in the context of promotional rate disclosures, the Board asks for comment on whether the deferred interest rate disclosures should be required for television, radio, and telephone advertisements. For the reasons we provide above in the context of promotional rate advertisements, AFSA does not believe that such disclosures are necessary or appropriate in these contexts.

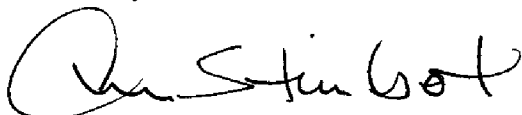
### **Effective Date**

The Board is obviously well aware of the fact that financial institutions will face enormous compliance challenges and burdens in the near future. Many will need to digest and implement revisions to Regulation Z, Regulation AA, Regulation DD, and other regulatory initiatives. It is nearly impossible to overstate how difficult the next several years will be for legal and compliance teams to respond to these regulatory changes. AFSA therefore asks the Board to make the final Regulation Z revisions effective two years after they are published, or at least delay mandatory compliance during that time.

### **Conclusion**

Again, AFSA appreciates the Board's willingness to offer its additional proposed revisions to Regulation Z for public comment. We generally support many of the provisions in the Proposed Rule, and we ask the Board to consider our comments as it prepares its final rule to amend Regulation Z. Please do not hesitate to contact me if AFSA may be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Stinebert", written over a horizontal line.

Chris Stinebert  
President and CEO  
American Financial Services Association